IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. 38372-M of 2005

DATE OF DECISION : 11.09.2006

Ajit Singh and others

.... PETITIONERS

Versus

State of Punjab and another

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. G.S. Sandhawalia, Advocate,
for the petitioners.

Mr. N.S. Gill, AAG, Punjab.

Mr. Kanwaljit Singh, Advocate,
for respondent No.2.

* * *

The petitioners (accused) have filed this petition under Section 482 of the Code of Criminal Procedure for quashing of FIR No. 81 dated 2.6.2004 under Sections 336/427/506/148/149 IPC read with Sections 25, 27 of the Arms Act, registered at Police Station Sadar Phagwara as well as the order dated 4.7.2005, passed by Judicial Magistrate Ist Class, Phagwara, whereby the cancellation report submitted by the investigating agency in the aforesaid FIR has not been accepted.

2. I have heard counsel for the parties and perused the contents of the FIR as well as the impugned order dated 4.7.2005.

3. The learned Magistrate, after recording the reasons, did not accept the cancellation report submitted by the investigating agency in the aforesaid FIR, but thereafter, he did not take any decision what to do with the matter. He did not exercise any of the two options available to him, i.e. to order the further investigation in the case or to himself take cognizance on the basis of the material placed with the report filed by the investigating agency under Section 173 Cr.P.C. He simply adjourned the case for

consideration on the point as to whether the offence in question allegedly committed by the accused require commitment of the case or not.

In my opinion, before considering this point, the Magistrate, after not accepting the cancellation report, is required to take a decision whether he himself wants to take cognizance of the matter, or to issue direction to the investigating agency to further investigate the matter. No such decision has been taken in this case.

In view of the above, in my opinion, the order dated 4.7.2005, passed by Judicial Magistrate Ist Class, Phagwara, is not sustainable and the same is hereby set aside. The matter is remanded back with direction to the Judicial Magistrate to consider and take a fresh decision on the cancellation report submitted by the investigating agency in accordance with law.

Disposed of accordingly.

September 11, 2006 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**